

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

12 VICTORIA RYAN,) Case No.: C-06-4812 PVT
13 Plaintiff,)
14 v.) **ORDER CONTINUING CASE
15 EDITIONS LIMITED WEST, INC. ET AL,) MANAGEMENT CONFERENCE
16 Defendants.) AND HEARING ON SPECIAL
17 MOTION TO STRIKE**
18

19 On October 10, 2006, Plaintiff and Counterclaim Defendant Victoria Ryan (“Ryan”) filed
20 a Special Motion to Strike Counterclaim of Editions Limited West, setting the hearing date for
21 November 14, 2006.¹ On the same date, Ryan filed a consent to proceed before a Magistrate
22 Judge. Because a motion to strike is a dispositive motion, consent of the parties is required
23 before a Magistrate Judge can rule upon a motion to strike. *See* 28 U.S.C. § 636(c)(1).
24 Pursuant to Judge Trumbull’s standing order, within two weeks of the filing of any dispositive
25 motion, each party must file either a consent form or a request for reassignment to a District
26 Court Judge. Defendant Editions has not yet filed either a Consent or a Request for
27 Reassignment.

28 ¹ The holding of this court is limited to the facts and the particular circumstances
underlying the present motion.

On November 1, 2006 Defendant and Counterclaim Plaintiff Editions Limited West, Inc. (“Editions”) filed its opposition. Under the Civil Local Rules, an opposition to a motion must be filed not less than 21 days prior to the hearing date. Civ. L.R. 7-3(a). Editions filed its opposition less than 21 days prior to the hearing date. A Case Management Conference is set for November 14, 2006, the same day as the hearing.

In light of all of the circumstances of this case,

IT IS HEREBY ORDERED that

1. The Case Management Conference is continued to 2:00 p.m. on November 21, 2006;
2. In the Joint Case Management Conference Statement due November 14, 2006, Plaintiff shall include the status of all parties who have not yet appeared.
3. Along with the Case Management Conference Statement, Editions shall also file either a Consent to Proceed before a Magistrate Judge or a Declination to Proceed before a Magistrate Judge and Request for Reassignment and;
4. The hearing date for the motion to strike is continued to December 12, 2006;² and
5. Plaintiff's Reply brief shall be filed no later than November 21, 2006.

IT IS SO ORDERED

Dated: November 6, 2006

Barbara V. Franklin

PATRICIA V. TRUMBULL
United States Magistrate Judge

²Section 425.16(f) requires that the hearing on a special motion to strike be held not later than thirty days after the motion is filed unless the court's docket requires a later hearing. Cal. Code Civ. Proc. §425.16(f). The Civil Local Rules provide that a hearing must be noticed for at least thirty-five days after the motion is filed. Civ. L.R. 7-2. The Civil Local Rules are docket conditions that justify a later hearing. *Rogers v. Home Shopping Network*, 57 F.Supp.2d 973, 981 n.3. Similarly, the need to clarify issues of consent is also a docket condition justifying a later hearing. The Court notes that the resolution of the special motion to strike will not resolve this lawsuit, merely the counterclaim. Accordingly, there appears to be no compelling need to hold a hearing as soon as possible. If the parties wish to have the Case Management Conference and the Hearing on the Motion to Strike on the same day, they may file either a stipulation and proposed order or an ex parte application to continue the Case Management Conference.